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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DOYLE WAYNE DAVIS, CDCR
12 #34318,

13 Plaintiff,

14 v.

15 DANIEL PARAMO, Warden, et al.,

16 Defendants.

Case No.: 16CV689 WQH (JMA)

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT
[ECF NO. 126]**

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18 Presently before the Court is Plaintiff Doyle Wayne Davis's motion for leave
19 to file First Amended Complaint. (ECF No. 126.) For the reasons set forth
20 below, Plaintiff's motion is DENIED.

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22 **A. BACKGROUND**

23 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed a
24 complaint on March 21, 2016 alleging fourteen (14) correctional and medical care
25 officials at Richard J. Donovan Correctional Facility ("RJD") and two (2) doctors
26 from Alvarado Hospital acted with deliberate indifference to his serious medical
27 needs and retaliated against him after he filed a San Diego Superior Court case
28 and various inmate grievances challenging his medical care. (ECF No. 1.) The

1 complaint asserts the following claims: (1) retaliation in violation of the First
2 Amendment; (2) conspiracy under 42 U.S.C. § 1986 in violation of the First
3 Amendment; (3) deliberate indifference to severe medical condition in violation of
4 the Eighth Amendment; and (4) deliberate indifference to severe medical
5 condition and falsification of medical reports due to cost considerations in
6 violation of the Eighth Amendment. (ECF No. 1 at 26-27.) All defendants filed
7 motions to dismiss. (ECF Nos. 22, 24, 46, 61.) On June 13, 2017, the Court
8 issued a Report and Recommendation (“R&R”) recommending all claims be
9 dismissed, other than the claims asserted against Defendants J. Silva, prison
10 physician, and S. Pasha, nurse practitioner. (ECF No. 76.) On July 11, 2017,
11 the Honorable Roger T. Benitez issued an order adopting the R&R. (ECF No.
12 78.)¹ Defendants Silva and Pasha filed an answer to the complaint on July 24,
13 2017. (ECF No. 79.)

14 On August 25, 2017, the Court issued a Scheduling Order Regulating
15 Discovery and Other Pre-Trial Proceedings (“scheduling order”). (ECF No. 82.)
16 The scheduling order included the following deadlines:

17 Deadline to file any motion to join other parties, to amend the
18 pleadings, or to file additional pleadings: October 23, 2017

19 Deadline to complete all discovery: February 28, 2018

20 On November 2, 2017 nunc pro tunc October 31, 2017, Plaintiff filed a
21 motion to compel discovery, in which he sought the production of medical
22 records and an order compelling Defendants to provide the identity of Defendant
23 John Doe “Jose.” (ECF No. 86.) The Court denied Plaintiff’s motion on
24 December 27, 2017. (ECF No. 95.) As relevant here, the Court found it could
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28 ¹ This case was reassigned from Judge Benitez to the Honorable William Q. Hayes on January
9, 2018. (ECF No. 97.)

1 not compel the production of discovery that had not yet been served. The Court
2 explained:

3 Plaintiff has not yet served an interrogatory or any other discovery
4 seeking the identity of Defendant John Doe “Jose.” Plaintiff’s “motion
5 to compel discovery and/or waiver of service” dated September 28,
6 2016 did not constitute a discovery request. As the Court stated in its
7 December 16, 2016 order on Plaintiff’s motion to compel, discovery
8 had not yet been authorized at that time, as three motions to dismiss
9 were pending before the Court. The Court stated, ‘If this case
10 proceeds to discovery, Plaintiff may then attempt to ascertain the true
11 identity of Defendant John Doe “Jose” and seek to amend his
12 Complaint to name that defendant.’ Dec. 16, 2016 Order, ECF No.
13 57, at 4. Now that the case has proceeded to discovery, Plaintiff may
14 seek this discovery by following the Federal Rules of Civil Procedure.
15 As he has not yet done so, this motion is premature.

16 (ECF No. 95 at 2-3.)

17 On January 9, 2018, the Court convened a Case Management Conference,
18 at which time Plaintiff advised he needed additional time, beyond the February
19 28, 2018 discovery deadline, to conduct discovery as he intended to serve
20 written discovery upon Defendants after he received responses to subpoenas the
21 Court had ordered to be served by the U.S. Marshal in its December 27, 2017
22 discovery order. (ECF No. 100.) Defendants did not oppose an extension of the
23 schedule. The Court accordingly issued an Amended Scheduling Order
24 Regulating Discovery and Other Pre-Trial Proceedings (“amended scheduling
25 order”) which included a new discovery deadline of May 31, 2018. (ECF No. 100
26 at 2.) The amended scheduling order did not include a new deadline to file
27 motions to join other parties, to amend the pleadings, or to file additional
28 pleadings, which had already passed on October 23, 2017, as Plaintiff did not
seek an extension of this deadline.

On May 11, 2018, Plaintiff filed a motion for leave to file First Amended
Complaint, in which he seeks to add Jose Gonzales in the place of Defendant

1 John Doe “Jose,” and to add Oscar A. Matthews, M.D. of Tri-City Medical Center
2 as a defendant. (ECF No. 126.) On May 15, 2018, the Court issued a briefing
3 schedule on Plaintiff’s motion, ordering Defendants to file any opposition by May
4 31, 2018 and Plaintiff to file a reply by June 14, 2018. (ECF No. 128.)
5 Defendants filed an opposition on May 31, 2018. (ECF No. 129.) Plaintiff did not
6 file a reply by June 14, 2018. Instead, on June 25, 2018, he filed a “notice of
7 non-service (again) by the court of a due date for Plaintiff’s reply brief to
8 Defendants’ opposition brief to amend complaint.” (ECF No. 131.) Because
9 Plaintiff claimed he had not received the Court’s May 15, 2018 briefing order, the
10 Court granted Plaintiff until July 9, 2018 to file a reply. (ECF No. 132.) Plaintiff
11 filed a reply on July 6, 2018. (ECF No. 133.)
12

13 **B. DISCUSSION**

14 Federal Rule of Civil Procedure 15(a) provides that, after the initial period
15 for amendments as of right, pleadings may only be amended with the opposing
16 party’s written consent or the court’s leave. Fed. R. Civ. P. 15(a)(2). “The court
17 should freely give leave when justice so requires.” *Id.* Rule 15’s policy of
18 favoring amendments should be applied with “extreme liberality.” *Chodos v.*
19 *West Publishing Co.*, 292 F.3d 992, 1003 (9th Cir. 2002). “In exercising its
20 discretion, ‘a court must be guided by the underlying purpose of Rule 15—to
21 facilitate decision on the merits rather than on the pleadings or technicalities.’”
22 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (quoting
23 *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). Courts commonly
24 use four factors to determine the propriety of a motion for leave to amend: bad
25 faith, undue delay, prejudice to the opposing party, and futility of amendment.
26 *Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007).

27 As noted above, Plaintiff seeks to add Jose Gonzales in the place of
28 Defendant John Doe “Jose,” and to add as a defendant Oscar A. Matthews, M.D.

1 of Tri-City Medical Center. He contends he notified Defendants on multiple
2 occasions of his intent to file an amended complaint. (Pl.'s Mot., ECF 126 at 2.)
3 Defendants argue leave to amend should be denied because Plaintiff unduly
4 delayed in bringing his motion, the amended complaint would be prejudicial, and
5 the motion violates the Court's scheduling order, which was already extended
6 once at Plaintiff's request. (Opp'n, ECF No. 129 at 1, 6-9.)

7 A. Undue delay

8 Undue delay is "delay that prejudices the nonmoving party or imposes
9 unwarranted burdens upon the court." *San Diego Comic Convention v. Dan Farr*
10 *Prods.*, 2017 WL 3269202, at *5 (S.D. Cal. Aug. 1, 2017) (citing *Fresno Unified*
11 *Sch. Dist. v. K.U. ex rel. A.D.U.*, 980 F. Supp. 2d 1160, 1176 (E.D. Cal. 2013)).
12 In evaluating undue delay, the court inquires "whether the moving party knew or
13 should have known the facts and theories raised by the amendment in the
14 original pleading." *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir.
15 1990).

16 Plaintiff was aware of Jose Gonzales, known only to him at that time as
17 "John Doe Jose," at the time he filed his original complaint. He blamed "Jose", a
18 male lab technician at RJD's Triage and Treatment Area, for an October 2014
19 drug test showing he had no morphine in his blood, which suggested Plaintiff was
20 selling the morphine prescribed to him to other inmates instead of using it. (ECF
21 No. 1-1 at 87.) Plaintiff alleged "Jose" told him he could not draw Plaintiff's blood
22 as his license was not valid, and that he instead supervised a female trainee in
23 taking the sample. (ECF No. 1 at 17; see also ECF No. 1-1 at 103.) Plaintiff has
24 voiced his intent to ascertain the identity of John Doe "Jose" and amend his
25 complaint to include him as a defendant since 2016. On October 4, 2016,
26 Plaintiff requested the Court order Defendants' counsel to identify John Doe
27 "Jose." (ECF No. 42.) The Court declined to do so, as discovery had not yet
28 been authorized due to the pendency of three motions to dismiss, but stated

1 Plaintiff could attempt to ascertain “Jose’s” identity if the case proceeded to
2 discovery. (ECF No. 57, citing *Wakefield v. Thompson*, 177 F.3d 1160, 1163
3 (9th Cir. 1999) (finding the plaintiff should be given an opportunity through
4 discovery to identify an unknown defendant).) After the motions to dismiss were
5 decided, the Court opened discovery on August 25, 2017, when it issued its initial
6 scheduling order. On October 29, 2017, two months after discovery
7 commenced, Plaintiff served discovery requesting the identity and licensing
8 information for “Jose.” (Findley Decl., ¶ 2.) On November 30, 2017, Defendants
9 responded, identifying John Doe as J. Gonzales. *Id.* Despite having all the
10 requisite facts needed to amend his complaint to substitute Jose Gonzales for
11 John Doe “Jose” at that time, Plaintiff did not seek a continuance of the
12 amendment deadline, which had already passed on October 23, 2017. Instead,
13 he delayed filing his motion for leave to amend until May 11, 2018, over 5½
14 months later, and only weeks before the discovery cutoff. The Court finds that in
15 doing so, Plaintiff unduly delayed moving to amend. *See Chodos v. West Publ’g*
16 *Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (finding motion for leave to file amended
17 complaint properly denied as untimely as it relied on information discovered
18 much earlier).

19 Plaintiff was also already aware of Dr. Matthews at the time he filed his
20 original complaint. On August 3, 2015, Plaintiff attended a telemedicine
21 appointment with Dr. Matthews. (FAC, ECF No. 126 at 273-74.) At that time, Dr.
22 Matthews had the following recommendations:

23 I had a lengthy discussion with this patient regarding future care. We
24 decided that it is better to be in atrial fibrillation than to have
25 controlled heart rate and I would recommend further this patient goes
26 into atrial fibrillation which in my opinion is going to be cost-effective.
27 Before we do anything, the patient needs a 2-D echocardiogram to
28 assess the cardiac chambers and function. This test has to be done
at Tri-City Medical Center in Oceanside to avoid any confusion and
the test will be read by myself.

1 *Id.* at 274. The medical records attached to Plaintiff's original complaint also
2 reference Dr. Matthews and his recommendations. See ECF No. 1-2 at 108. In
3 his proposed amended complaint, Plaintiff contends, "This non-controlled heart
4 rate is what caused by damaged heart. [Defendant] Silva conspired with this
5 medical specialist in ensuring my heart was damaged forever." (ECF No. 126 at
6 25.) Plaintiff clearly had all of the requisite facts needed to name Dr. Matthews
7 as a defendant in his original complaint. Plaintiff's original complaint included not
8 only prison personnel, but also two outside physicians, Drs. Zamudio and
9 Butcher. Plaintiff has not adequately explained why he did not name Dr.
10 Matthews as well. It was not necessary for Plaintiff to wait to receive
11 subpoenaed medical records before naming Dr. Matthews as a defendant.
12 Because Plaintiff knew sufficient facts to name Dr. Matthews as a defendant at
13 the time he filed his original complaint, the Court finds he unduly delayed in
14 seeking to amend. See *Jackson*, 902 F.2d at 1388.

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16 Plaintiff contends he notified Defendants on multiple occasions of his intent
17 to seek leave to amend. (Pl.'s Mot., ECF No. 126 at 6-7.) This does not,
18 however, excuse his delay in actually *moving* for leave to amend. Moreover,
19 contrary to Plaintiff's argument that Defendants never voiced an opposition to his
20 stated intent to seek leave to amend, Defendants were not obligated to oppose
21 until Plaintiff actually filed his motion. The Court finds Plaintiff unduly delayed in
22 moving to amend his complaint because he waited over five months after
23 ascertaining Jose Gonzales's identity to move to amend, could have named Dr.
24 Matthews as a defendant at the time he filed his original complaint, and sought
25 amendment well after the October 23, 2017 amendment deadline and only
26 weeks before the May 31, 2018 discovery cutoff.

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1 B. Prejudice to Defendants

2 The Ninth Circuit has determined “it is the consideration of prejudice to the
3 opposing party that carries the greatest weight.” *Eminence Capital, LLC v.*
4 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). In evaluating prejudice,
5 courts often consider whether relevant deadlines would have to be continued as
6 a result of the new pleading, the stage of discovery at the time of amendment,
7 the extent to which additional discovery would have to be conducted, and the
8 degree to which amendment may delay the proceedings. *See Johnson v.*
9 *Serenity Transp., Inc.*, 2015 WL 4913266, at *5 (N.D. Cal. Aug. 17, 2015)
10 (collecting cases).

11 Given that the amendment and discovery deadlines have passed, that the
12 discovery period was nearly closed at the time Plaintiff moved to amend, and the
13 case is over two years old, the Court finds the addition of any new defendants
14 will prejudice Defendants. If the Court were to permit amendment, Silva and
15 Pasha would have to wait for service upon and the appearance of the new
16 defendants, who would likely be represented by separate defense counsel, as
17 well as likely motions to dismiss. Then, if the motions to dismiss were not
18 granted, discovery would need to be reopened. Defendants would be required to
19 depose Plaintiff a second time, in order to examine him regarding his allegations
20 against Gonzales and Dr. Matthews, as to whom Plaintiff alleges Silva conspired
21 to deny him medical care, and would need to seek discovery from Dr. Matthews.
22 See Findley Decl., ¶ 4. Irrespective of Plaintiff’s argument that he made his
23 intent to amend his complaint known, it would be inherently prejudicial to bring
24 new defendants into this action over two years after the original complaint was
25 filed, particularly in view of the May 31, 2018 discovery cutoff and the resultant
26 delay Defendants would experience in bringing this case to resolution. *See*
27 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir.
28 1999) (“A need to reopen discovery and therefore delay the proceedings

1 supports a district court's finding of prejudice from a delayed motion to amend
2 the complaint."); see also *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 799 (9th Cir.
3 1991) (finding prejudice by the addition of new claims at a late stage of the case,
4 regardless of argument that the new claims were implicit in previously pleaded
5 claims).

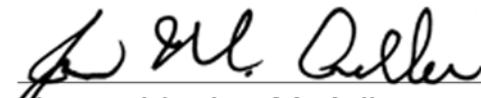
6 The Court concludes Defendants would be unreasonably prejudiced by the
7 addition of two new defendants at this stage of the case.

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9 **C. CONCLUSION**

10 For the reasons set forth above, Plaintiff's motion for leave to amend the
11 complaint is DENIED.

12 **IT IS SO ORDERED.**

13 Dated: July 23, 2018

14 
15 Honorable Jan M. Adler
16 United States Magistrate Judge
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